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15 **Attorneys For Defendant**
16 **ELI LILLY AND COMPANY**

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 STATE OF CALIFORNIA *ex rel.* JAYDEEN) Case No. 07-cv-04911-SI
21 VICENTE and JAYDEEN VICENTE)
22 Individually,) Assigned to: Hon. Susan Illston
23 Relators,)
24 v.) **DECLARATION OF PAUL L. YANOSY IN**
25) **SUPPORT OF REQUEST FOR JUDICIAL**
26 ELI LILLY AND COMPANY,) **NOTICE IN SUPPORT OF MOTION TO**
27 Defendant.) **DISMISS PURSUANT TO FED. R. CIV. P.**
28) **12(b)(1), 12(b)(6) AND 9(b)**
) Date: Nov. 16, 2007
) Time: 9:00 a.m.
) Place: Courtroom 10, 19th Floor

1 I, Paul L. Yanosy, declare as follows:

2 1. I am an attorney with Sidley Austin LLP, counsel for defendant Eli Lilly and
3 Company (“Lilly”) in the above-captioned matter, and admitted to practice before this Court. I make
4 this declaration in support of Defendant’s Request for Judicial Notice in Support of Motion to
5 Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(6) and 9(b) (“Request for Judicial Notice”).

6 2. Attached to the Request for Judicial Notice are true and correct copies of the
7 following documents, or the relevant pages thereof, as indicated therein:

8 a. Exhibits 1-4: *Eli Lilly and Company* FORMS 10-K, fiscal years 2003, 2004, 2005 and
9 2006, as filed with the Securities and Exchange Commission (“SEC”).

10 b. Exhibit 5: *Chapter 15 – Covered Medical and Other Health Services* MEDICARE
11 BENEFIT POLICY MANUAL, *available at:*
12 <http://www.cms.hhs.gov/manuals/Downloads/bp102c15.pdf> (last visited September 28, 2007).

13 c. Exhibit 6: DRUGDEX compendia database entry for Zyprexa (olanzapine),
14 updated February, 2007.

15 d. Exhibit 7: Hollister H. Hovey, *Eli Lilly Discloses U.S. Civil Probe Into Its*
16 *Practices* WALL ST. J., Mar. 26, 2004 at B2.

17 e. Exhibit 8: Mark Jewell, *Federal Officials Investigate Marketing of Lilly Drugs*
18 *AP WIRE*, Mar. 25, 2004.

19 f. Exhibit 9: Randsdell Pierson and Jed Seltzer, *Government Probes Lilly’s*
20 *Marketing Practices*, REUTERS, Mar. 25, 2004.

21 g. Exhibit 10: Jeff Swiatek, *Federal Prosecutor Opens Probe of Lilly*, INDIANAPOLIS
22 *STAR*, Mar. 26, 2004 at 1C.

23 h. Exhibit 11: Michele Marcucci and Rebecca Vesely, *Oakland Physician May Lose*
24 *License*, OAKLAND TRIBUNE, Dec. 4, 2006.

25 i. Exhibit 12: Alex Berenson, *Drug Files Show Maker Promoted Unapproved Use*,
26 *N.Y. TIMES*, Dec. 18, 2006 at A1.

27 j. Exhibit 13: Val Brickates Kennedy, *Update: Lilly Denies Report of Zyprexa*
28 *Wrong-doing*, DOW JONES BUSINESS NEWS, Dec. 18, 2006.

k. Exhibit 14: Marc Siegel, *Medicine; Doctor Files; Pressured to Prescribe*, L.A. TIMES, Dec. 25, 2006 at F3, a true and correct copy of which is attached hereto as **Exhibit 14**.

l. Exhibit 15: Avery Johnson, *WSJ (1/5) Update: Lilly Settles 18,000 Zyprexa Claims*, WALL ST. J., Jan. 5, 2007 at A4.

m. Exhibit 16: Alex Berenson, *States Study Marketing of Lilly Pill*, N.Y. TIMES, Jan. 20, 2007 at C1.

n. Exhibit 17: Jerome Burne, *Doped to Keep Them Quiet*, DAILY MAIL, Jan. 30, 2007 at 38.

o. Exhibit 18: Rita Rubin, *Vioxx Whistle-Blower Speaks Up on Demoted Antibiotic Ketek; Graham: 'Nothing has Really Changed' in FDA Oversight*, USA TODAY, Feb. 14, 2007 at 7D.

p. Exhibit 19: Keith J. Winstein, *Congressional Panel to Study Off-Label Use of Stents, Drugs*, WALL ST. J., Mar. 6, 2007 at A12.

q. Exhibit 20: Reuters, *House Panel Chief Seeks Data From Makers of Stents and Drugs*, N.Y. TIMES, Mar. 6, 2007 at C6.

r. Exhibit 21: Petra Pasternak, *Plaintiffs Lawyers Hit on New Pharma Angle: State Clients*, THE RECORDER, Apr. 3, 2007.

s. Exhibit 22: *Hersh & Hersh Targets Eli Lilly's Most Profitable Anti-Psychotic Drug*, BUSINESS WIRE, Feb. 27, 2003.

t. Exhibit 23: *State Prosecutors Say Trickle of Off-Label Cases Will Soon Turn into a Flood*, RX COMPLIANCE REPORT, Apr. 4, 2007 at 1.

u. Exhibit 24: *Pharmacy Claim Form (30-1) Completion*, available at: http://files.medi-cal.ca.gov/pubsdoco/publications/Masters-MTP/Part2/pcf30-1comp_p00.doc (last visited September 28, 2007).

v. Exhibit 25: GOVERNMENT CODE SECTIONS 12650 TO 12656, A COMPLETE HISTORY as compiled and certified by Jan Raymond.

w. Exhibit 26: *Eli Lilly and Company FORM 10-Q*, for the quarter ending September 30, 2007.

1 I declare under penalty of perjury under the laws of the Unites States that the forgoing
2 is true and correct. Executed on this 28th day of September 2007 at San Francisco, California.

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4 /s/ Paul L. Yanosy

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